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2022-05-06 10:43:32
PAAB

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2021-065-00244R

Parcel No. 01301-004-00-00-000

Wayne and Kelly Stangl,

Appellants,

vs.

Mills County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on March 23, 2022. Wayne and Kelly Stangl were self-represented. Attorney Brett Ryan represented the Mills County Board of Review.

Wayne and Kelly Stangl own a property located at 51567 275th, Silver City, Iowa. The property's January 1, 2021 assessment was set at $480,200, allocated as $102,760 in land value and $377,440 in improvement value. The property is classified residential. (Ex. A).

The Stangls petitioned the Board of Review claiming the property was misclassified. (Ex. C). The Board of Review denied the petition. (Ex. B).

The Stangls appealed to PAAB reasserting the claim that the property is misclassified. Iowa Code § 441.37(1)(a)(1)(c). They believe the property should be classified agricultural.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Findings of Fact

The subject 14.69-acre site is improved with a one-story home built in 2007 with 1856 square feet of gross living area, a full walk-out basement with 1000 square feet of living-quarters-quality finish, an open porch, two decks, and an attached 768-square-foot attached garage. The home is listed in normal condition with a high-quality construction grade (2-10). The site is also improved with a 1200-square-foot steel utility building built in 2009. (Ex. A). The Stangls are not challenging the assessment of the dwelling, but believe the home and immediate 2 acres should be classified residential, and the balance of the site should be classified as agricultural.

The Stangls purchased the property in 2015 for $446,500. The property record card of the subject reflects it has been classified rural residential since at least 2014. (Ex. A). Kelly Stangl testified the land had been row cropped before they purchased it. The 2015 crop year was contracted by the former owners with another farmer. (Ex. C). The Stangls contracted with Larry O'Rourke, a local farmer, to farm the land starting in 2016. He has continued to farm the land since that time to produce forage (hay) which is used by him as livestock feed. (Ex. 9). 12.57 acres of the site is designated as cropland by the USDA, and the Farm Service Agency has assigned the property a farm

number. (Ex, 3). Photographs of the hay ground and bale production were submitted. (Ex. 4).

Kelly is employed by the U.S. Army Corps of Engineers where she is the Program Manager for the Army and Air Force AG Grazing/Hay/Row Crop Program. (Ex. 6). Through this work, she manages almost 30,000 acres of government-owned land and she has prepared and executed in-kind consideration lease agreements with farmers for numerous installations. She utilized this knowledge and experience to create an in-kind agreement with O'Rourke. Under that agreement O'Rourke performs soil testing, seeds, and fertilizes the land and in exchange retains the hay crop. Kelly testified O'Rourke mainly uses his own equipment and has been a good steward of the land. She stated the land produced only seven large bales in the first year of his farming, but he has improved the soil such that the hay production last year was approximately 38 bales. O'Rourke grows what Kelly described as organic hay which he feeds to his beef cattle and promotes as organically fed. She was not familiar with the size or extent of O'Rourke's cattle operation, but believed the arrangement was a win-win for both parties. Kelly further stated she believed O'Rourke's expenses versus the crop produced was essentially a wash. The Stangls receive no compensation from O'Rourke and report no income from farming on IRS form Schedule F. Kelly testified if O'Rourke did not farm the land, they would enter into a similar in-kind agreement with another farmer.

Kelly also testified about her investigation of the classification of several of her neighbor's properties. (Ex. 10). She recalled being told by a staff member of the Assessor's Office that one must have a minimum of 40 acres to qualify for agricultural classification. (Ex. 9). She found several properties on her street with less than 40 acres, but were nonetheless classified as agricultural. Kelly again contacted the Assessor's Office and was advised one does not need to have 40 acres to obtain that classification. A spreadsheet of neighboring properties in the subject's subdivision reflected six properties, including the subject were classified as residential, and eight, owned by five owners were classified as agricultural. (Ex 10). These acreages ranged

from 3.66 acres to 46.43 acres. Kelly acknowledged she did not know about the farming operations that may be taking place on these properties.

Mills County Assessor Christina Govig testified on behalf of the Board of Review. She was familiar with the properties Kelly identified. She noted the properties owned by Hughes (the original owner of the land in the subdivision) were assessed for land only, and had no dwelling. (Ex. 17). She stated that if a home was constructed, the classification would be reconsidered. Govig also noted the properties owned by Plumer also had no dwelling, and were part of a larger farming operation. (Ex. 14). Similarly, the Marshall 29-acre parcel was also part of a farming operation of approximately 200 acres. (Ex. 15). The Grauer property is owned by a disabled veteran and is wholly tax exempt. Thus, it receives nominal analysis. Finally, Govig indicated the two Aarhus parcels, although currently classified as agricultural, will be reclassified to residential. (Ex. 23).

Govig also reviewed the mortgage appraisal of the subject property completed by Fred Wohlenhaus of Wohlenhaus Appraisal Service dated February 2020. (Ex. E). She noted the first three comparable sales were all classified residential. We note the February 2020 opinion of market value was $480,000, $200 less than the January 1, 2021 assessment. Under the cost approach to value, Wohlehaus opined a site value of $105,000.

Finally, Govig described her analysis of a property's primary use in arriving at a proper classification.

Analysis & Conclusions of Law

The Stangls assert the subject property is misclassified as residential and should instead be classified, at least partially, agricultural. They bear the burden to prove the property is misclassified. Iowa Code § 441.21(3).

Iowa assessors are to classify and value property following the provisions of the Iowa Code and administrative rules adopted by the Iowa Department of Revenue (Department) and must also rely on other directives or manuals the Department issues. Iowa Code §§ 441.17(4), 441.21(1)(h). The Iowa Department of Revenue has

promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. The assessor shall classify property according to its present use. *Id*. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id*. Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id*. There can be only one classification per property, except as provided for in paragraph 71.1(4)"d". *Id*. The exception in rule 701-71.1(4)"d" does not permit dual-classification of property as residential and agricultural. Thus, the Stangls desire that the subject property be classified, and thereby taxed, partially as residential and partially agricultural is not permissible.

The determination of a property's classification "is to be decided on the basis of its primary use." *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). Particularly when not previously adjudicated, a property's prior classification is not conclusive and binding in subsequent years because each "tax year is an individual assessment which does not grow out of the same transaction." *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (1989). See also § 441.21(3)(b)(3).

Residential property "shall include all land and buildings which are primarily used or intended for human habitation." R. 701-71.1(4). This includes the dwelling as well as structures used in conjunction with the dwelling, such as garages and sheds. *Id*.

The Stangls cited the Webster's Dictionary definition of the term "agricultural" as "the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products." For assessment classification purposes, however, assessors are to use the definition of agricultural real estate adopted by the Department of Revenue. That definition states that agricultural property includes land and improvements used in good faith primarily for agricultural purposes. R. 701-71.1(3). Land and nonresidential improvements shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest and fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. *Id.* Agricultural real estate shall also include woodland, wasteland, and pastureland, but

only if that land is held or operated in conjunction with agricultural real estate as defined in the subrule. *Id*.

As can be seen from the above rule, agricultural property is defined differently under Iowa law than by Webster's dictionary. In addition to producing crops, the rule requires an analysis of good faith, primary use, and intended profit.

Although the Stangls referred to neighboring properties which are agriculturally classified, PAAB has long held such evidence offers little to the analysis of the proper classification of a specific property. As use is the basis for classification determinations, often the record lacks the necessary and complete information to properly compare the use of one property as opposed to another. Here, we have testimony of the Mills County Assessor about the use of the cited properties together with use of related properties. Based on the assessor's credible testimony, the nearby properties that were classified agricultural either had no dwellings or were operated in conjunction with larger farming operations. Moreover, the assessor noted if and when dwellings are built on vacant parcels, their classifications would likely be changed to residential. As noted above, the classification of the Stangls' property is ultimately to be based on its own primary use when considered against the classification rules.

PAAB has decided a number of cases that involve challenges to classification of properties as residential versus agricultural. A review of these decisions demonstrates the inquiry is fact-intensive and based on the unique circumstances of each case. PAAB has also considered cases specifically involving properties with a residence and also hay production taking place. In *Denman v. Dallas County Bd. of Review*, Docket No. 2019-025-00222R (December 2, 2020), we found the taxpayer's use of almost every portion of his 10.61-acre site for hay production, both before and after the construction of his home, along with his long-term intentions to farm the property and an adjoining family farm was sufficient to show the property was presently and primarily used for agricultural purposes. Denman's property and his family's adjoining land was rented by a farmer and self-described hay specialist in exchange for rent at the rate of $200 per acre. This was a longstanding arrangement between the parties and was expected to continue. This was sufficient for PAAB to find the activity was for intended profit.

Recently in *Overgaard v. Dallas Cnty. Bd. of Review*, Docket No. 2021-025-00346R (Mar. 8, 2022), PAAB considered the classification of a 16.62-acre site improved with a dwelling but also used as a 13-acre hay farm. The testimony demonstrated bales produced from the property were sold or traded. PAAB determined the property was used primarily in good faith for agricultural purposes with an intent to profit and modified the property's classification to agricultural.

The Board of Review also cited to *Cunningham v. Guthrie Cnty. Bd. of Review*, Docket No. 2020-039-00315C (Mar. 29, 2021). In that case, a vacant 2- to 3-acre site was used as a hay field and as part of the owner's neighboring dock and boat lift business. The testimony demonstrated, however, that the agricultural use had yet to produce any revenue. As a result, PAAB determined the evidence did not demonstrate an intent to profit from an agricultural use and therefore the classification should remain commercial.

We have also considered classification disputes where unimproved property is farmed by a third party with no compensation to the land owner. In *Grubb v. Dallas Cnty. Bd. of Review*, PAAB Docket No. 11-25-0338 (November 8, 2012), PAAB considered the classification of three small parcels farmed by a professional farmer for no compensation to Grubb. The Board of Review had classified the properties as commercial. The evidence demonstrated the farmer had five or six other leases for different Grubb tracts and his agreement to farm the subject tracts allowed him to maintain this relationship for other properties. The evidence also reflected he made a net profit from the crops grown on the subject parcels. PAAB considered the farmer's use of the property and found present, good faith use, with an intent to profit.

Several factors distinguish the *Grubb c*ase from the case at hand. First, there was no separate residential or commercial use of the Grubb parcels. Further, the evidence of the use and benefit to the local farmer was substantial and persuaded us the classification should be changed from commercial to agricultural.

In contrast, the Stangls have used the subject property as their principal residence since 2015 and agree at least the home and immediate surrounding land should be classified as residential. Although they wish only the hay ground be classified

as agricultural, as noted above, dual classification of the subject property is unavailable. The acres being hayed by O'Rourke amount to the majority of the site. However, size, or percentage of the site used for his purposes is not controlling.

We must examine whether the facts demonstrate the subject property is being used for agricultural purposes in good faith with an intent to profit. We find Kelly's testimony and knowledge of the leasing of land through in-kind arrangements to be credible. Her knowledge of techniques for soil improvement, the benefits of organic production, and belief in good land stewardship principles was impressive. Both she and her husband work full time and if they did not have the current arrangement with O'Rourke, they would enter into a similar arrangement with someone else.

O'Rourke has been successful in improving the quality of the subject's soil and level of hay production – demonstrated by the increase in hay yields. Kelly did not know, and the record does not indicate, the level of benefit this arrangement provides to O'Rourke's livestock production activities. Although Kelly believed this arrangement is a win-win for all parties, she also testified his expenses versus his production is essentially a wash.

The evidence indicated the primary benefits to the Stangls are the general improvement in the land's condition and the fact they are not responsible for care and maintenance of those portions of the property. While improving the quality and sustainability of the land is a laudable goal, we find these benefits do not equate to an intent to profit from the use of the land. The absolute lack of any monetary benefit to the Stangls from O'Rourke's use of their land is fatal to their claim of misclassification.

Viewing the record as a whole, we find the Stangls did not submit sufficient evidence that the primary use of the property as of January 1, 2021, was agricultural with an intent to profit and thus they have not established that the subject property was misclassified.

Order

PAAB HEREBY AFFIRMS the Mills County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2021).

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.

Elizabeth Goodman, Board Member

Dennis Loll, Board Member

Karen Oberman, Board Member

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